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EXAMINER

MORRISON, JAY A

ART UNIT

PAPER NUMBER

2168

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/656,208	<b>Applicant(s)</b> FISCHER ET AL.	
	<b>Examiner</b> JAY A. MORRISON	<b>Art Unit</b> 2168	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                        |                                                                   |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/24/08</u> .                                                | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Remarks***

1. Claims 1-26 are pending.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 22-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. These claims disclose a system or apparatus but do not describe hardware which executes each of the claimed steps, which is required for a system claim to be statutory. Accordingly, these claims are rejected as non-statutory for failing to disclose such hardware.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2, 6-9, 13-16, 20-22 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Ohran (Patent Number 5,835,953).

As per claim 1, Ohran teaches

A computer-implemented method for controlling access to a data object stored in a first storage location, the data object having an identifier (ID), the method comprising:  
(see abstract and background)

determining whether the data object is being archived by checking whether the ID is stored in a first lock object; (identify those storage locations that have new data written, column 5, lines 49-51, figure 7A, items 22 and 138; identify those storage locations that have new data written, column 11, lines 30-33)

checking whether the ID is associated with a second storage location; (map locations indicate new data, column 23, lines 57-62)

and granting access to the data object if the ID is not stored in the first lock object and the ID is not associated with a second storage location.(mass storage write request, column 22, lines 56-62)

As per claim 2, Ohran teaches

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deleting the ID from the first lock object, if the ID is stored in the first lock object and the ID is not associated with a second storage location, after granting access to the data object. (column 23, lines 60-62)

As per claim 6, Ohran teaches

storing the ID in a second lock object before checking whether the ID is stored in the first lock object and before checking whether the ID is associated with the second storage location. (column 23, lines 55-58)

As per claim 7, Ohran teaches

checking whether the ID is stored in the second lock object before granting access to the data object; and denying access to the data object if the ID is not stored in the second lock object. (column 22, lines 56-62)

As per claims 8-9 and 13-14,

These claims are rejected on grounds corresponding to the arguments given above for rejected claims 1-2 and 6-7, respectively, and are similarly rejected.

As per claims 15-16 and 20-21,

These claims are rejected on grounds corresponding to the arguments given above for rejected claims 1-2 and 6-7, respectively, and are similarly rejected.

As per claim 22, Ohran teaches

A memory for storing data for access by a process being executed by a processor, the memory comprising: (see abstract and background)

a structure for controlling access to a data object stored in a first storage location, the data object having an identifier (ID), the structure comprising: (identify those storage locations that have new data written, column 5, lines 49-51, figure 7A, items 22 and 138)

a first lock object storing the ID and a link, associated with the ID, to a second storage location where the data object is stored, wherein the storage of the ID in the first lock object indicates that the data object is being archived; (data blocks 152 are received by the backup system and applied to storage locations 124 to achieve storage locations 154, column 25, lines 8-12, figure 7B, item 152, 154)

and a second lock object storing the ID of the data object. (copy snapshot map to backup map and backup map is used to indicate the data blocks transferred to the backup system, column 17, lines 59-62)

As per claim 26, Ohran teaches

the first and second lock objects are created by a data moving or data archiving process. (column 10, lines 60-62)

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6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 3-5, 10-12, 17-19 and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohran (Patent Number 5,835,953) in view of Larsson et al. ('Larsson' hereinafter) (Patent Number 5,548,750).

As per claim 3,

Ohran does not explicitly indicate “the first lock object comprises a table having a first column for the ID and a second column for a link to the second storage location associated with the ID”.

However, Larsson discloses “the first lock object comprises a table having a first column for the ID and a second column for a link to the second storage location associated with the ID”. (column 2, lines 48-52)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Ohran and Larsson because using the steps of “the first lock object comprises a table having a first column for the ID and a second column for a link to the second storage location associated with the ID” would have given those skilled in the art the tools to improve the invention by allowing backup functionality activated by a central handler to synchronize functionality. This gives the user the advantage of being assured that data is not corrupted.

As per claim 4,

Ohran does not explicitly indicate “the first lock object comprises a table having a first column for the ID and a second column for a link to the second storage location associated with the ID”.



However, Larsson discloses “the first lock object comprises a table having a first column for the ID and a second column for a link to the second storage location associated with the ID”. (column 7, lines 34-39)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Ohran and Larsson because using the steps of “the first lock object comprises a table having a first column for the ID and a second column for a link to the second storage location associated with the ID” would have given those skilled in the art the tools to improve the invention by allowing backup functionality activated by a central handler to synchronize functionality. This gives the user the advantage of being assured that data is not corrupted.

As per claim 5,

Ohran does not explicitly indicate “the data object comprises one or more fields of one or more tables and wherein the ID comprises one or more key fields of the one or more tables”.

However, Larsson discloses “the data object comprises one or more fields of one or more tables and wherein the ID comprises one or more key fields of the one or more tables”. (column 4, lines 48-52)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Ohran and Larsson because using the steps of “the data object comprises one or more fields of one or more tables and wherein the ID comprises one or more key fields of the one or more tables” would have given those

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skilled in the art the tools to improve the invention by allowing backup functionality activated by a central handler to synchronize functionality. This gives the user the advantage of being assured that data is not corrupted.

As per claims 10-12,

These claims are rejected on grounds corresponding to the arguments given above for rejected claims 3-5 and are similarly rejected.

As per claims 17-19,

These claims are rejected on grounds corresponding to the arguments given above for rejected claims 3-5 and are similarly rejected.

As per claim 23, Ohran teaches

Ohran does not explicitly indicate “the first lock object comprises a table having a first column for the ID and a second column for the link”.

However, Larsson discloses “the first lock object comprises a table having a first column for the ID and a second column for the link”. (column 4, lines 34-39)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Ohran and Larsson because using the steps of “the first lock object comprises a table having a first column for the ID and a second column for the link” would have given those skilled in the art the tools to improve the invention by

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allowing backup functionality activated by a central handler to synchronize functionality.

This gives the user the advantage of being assured that data is not corrupted.

As per claim 24,

Ohran does not explicitly indicate “the data object comprises one or more fields of one or more tables and wherein the ID comprises one or more key fields of the one or more tables”.

However, Larsson discloses “the data object comprises one or more fields of one or more tables and wherein the ID comprises one or more key fields of the one or more tables”. (column 4, lines 48-52)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Ohran and Larsson because using the steps of “the data object comprises one or more fields of one or more tables and wherein the ID comprises one or more key fields of the one or more tables” would have given those skilled in the art the tools to improve the invention by allowing backup functionality activated by a central handler to synchronize functionality. This gives the user the advantage of being assured that data is not corrupted.

As per claim 25,

Ohran does not explicitly indicate “the data object comprises one or more fields of one or more tables and wherein the ID comprises one or more key fields of the one or more tables”.

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However, Larsson discloses “the data object comprises one or more fields of one or more tables and wherein the ID comprises one or more key fields of the one or more tables”. (column 4, lines 48-52)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Ohran and Larsson because using the steps of “the data object comprises one or more fields of one or more tables and wherein the ID comprises one or more key fields of the one or more tables” would have given those skilled in the art the tools to improve the invention by allowing backup functionality activated by a central handler to synchronize functionality. This gives the user the advantage of being assured that data is not corrupted.

### ***Response to Arguments***

8. Applicant's arguments with respect to claims 1-26 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

9. The prior art made of record, listed on form PTO-892, and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jay A. Morrison whose telephone number is (571) 272-7112. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tim Vo can be reached on (571) 272-3642. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Tim T. Vo/  
Supervisory Patent Examiner, Art Unit 2168

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